

How to manage collective redundancies



booklet

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About this guide

Managing the individual

Every redundancy situation, no matter how large or small, involves individuals.

Individual experiences – whether they involve the threat of losing your job, of having to dismiss someone, or seeing colleagues leave while you continue in work – need to be carefully managed.

Many of the good management practices for dealing with collective redundancies also apply to handling individual redundancies sensitively and fairly (see the diagram ‘collective and individual consultation, the basic principles,’ p10).

Organisations grow and contract, move location and reorganise. With careful planning employers can make these transitions of scale, place or working practices as effective as possible.

This guide will help employers look after their staff and their business when faced with the prospect of making a significant number of people redundant within a relatively short period.

It will also offer some clarity for employers, employee representatives and employees about what the law says on collective redundancy (where 20 or more employees may lose their jobs within a 90 day period at a

single establishment), the impact of case law and what common sense recommends.

During periods of major and sometimes traumatic change, it is natural for those involved to ask:

- why is it happening?
- who is affected?
- what can we do about it?
- how long will it take?
- what happens next?

Misunderstandings can arise when the answers to any of these questions are not clear.

We have produced a simple timeline to highlight and explain some of the key stages of a collective redundancy process. We also give some tips for working more closely with employees and employee representatives and how to manage the psychological impact of redundancies.

Note: throughout the guide, where something is a legal requirement this is indicated by the word “must”, for example, “employers must consult...” and “consultation must begin ...”. Where the word “should” is used, this indicates what Acas considers to be good employment practice.

What is collective redundancy?

Redundancies commonly arise when an employer needs to:

- close or move all or part of the business
- make cost savings due to a lost order, change in customer demand or an efficiency drive
- introduce new technology or reorganise the way the business is run.

If an employer is proposing to make redundant 20 or more employees at one establishment within 90 days, legal requirements regarding collective consultation apply. The law defines this collective redundancy situation as:

“dismissal for a reason not related to the individual concerned or for a number of reasons all of which are not so related.”

This definition might include a situation where dismissals are part of a reorganisation where there is no

reduction in the overall numbers. For example, an employer may wish to change the contracts of 20 employees. If the employer decides to terminate the contracts and issues new ones, these dismissals would be classed as redundancy for the purposes of collective redundancy rules and trigger the statutory consultation procedure. For more information, see the Acas guide ‘Varying a contract of employment’.

Why is consultation so important?

Good communication and consultation are the bedrock of every effective organisation. By giving employees and employee representatives the information they need about proposed changes within an organisation and asking for their views on the best way forward, employers can:

- ✓ **have better discussions** – employees can understand the business reasons behind any proposals and unions and representative groups can act as useful sounding boards

✓ **keep employees motivated and engaged.** The Macleod Review on building employee engagement found that giving employees a voice in work issues is critical to engagement. Line managers can also help to put organisational changes into a context that teams and individuals can understand

✓ **protect the wellbeing of their employees.** Being under threat of losing your job is very stressful for those affected, including the

managers who have to break the bad news and for the staff who remain (see p35). Demonstrating empathy can be as important as adhering to organisational policies

✓ **help the business to survive and plan for the future.** Many organisations focus on the redundancy process but forget to plan for life afterwards. Where possible, you need to develop a blueprint for a restructured business going forward

What does the law on collective redundancy require?

The law states that when proposing to make redundant 20 or more employees at one establishment within 90 days, an employer must:

- consult with any recognised trade union or, if none, with other elected employee representatives
- start consultation in good time – at least 30 or 45 days before the first dismissal takes effect depending on the number of proposed redundancies. No dismissals can take effect until consultation is complete and the minimum period of 30 or 45 days has elapsed
- consult on ways of avoiding dismissals, reducing the numbers to be made redundant and mitigating the effect of the dismissals
- disclose in writing to the appropriate representatives certain information concerning the proposed dismissals
- notify the Secretary of State for Business, Innovation and Skills at least 30 or 45 days in advance of the first dismissal taking effect, depending on the number of proposed redundancies.

- ✓ **avoid/reduce the need for redundancies.** Unions and/or employee representatives can often come up with proposals that can help to save jobs
- ✓ **save money.** Failure to properly consult employees can lead to the payment of a 'protective award' to employees. The employment tribunal can decide how many weeks normal pay is awarded to an employee (up to a maximum of 90 days).

As a rule of thumb, the bigger the change and the more people it affects, the more important it is to get the communication and consultation right.

Keeping people in the dark about what's happening is not good for emotional wellbeing or productivity. However, people will not appreciate being alarmed unnecessarily, so making the right judgement about

when a redundancy situation might arise is vital.

Communication and consultation should not just be a process that is dusted off and brought to life during redundancies or other major organisational change. If employers have a good rapport with employee representatives, then discussions over redundancies are likely to be more effective in looking after the future interest of both employees and the business.

Employers must notify the Secretary of State of any proposed collective redundancies. A copy of the 'Advance Notification of Redundancies' form (known as 'HR1') can be obtained from the Insolvency Service at www.insolvency.gov.uk.

Help for employees

Throughout the redundancy process, you should be thinking about the help that you can offer employees.

If you have to make redundancies, Jobcentre Plus can give you and your employees support and advice through its Rapid Response Service.

Help for employees (continued)

It is recommended that you contact Jobcentre Plus as soon as possible to discuss appropriate support. Early contact with the Rapid Response Service would be treated in confidence and does not jeopardise the consultation process. It also ensures that support is in place when it is most needed.

Throughout the redundancy notice period the support offered by Jobcentre Plus and partners can include:

- connecting people to jobs in the labour market
- matching people facing redundancy to known job vacancies
- helping people to construct a CV
- helping people to enhance their jobsearch skills
- providing general information about benefits
- helping people to identify their transferable skills and training needs
- providing job-focussed training to help people develop vocational skills
- helping to meet discretionary costs, for example travel to work expenses
- for large redundancies we may also provide on-site services to promote jobs or to take benefit claims.

To find out how your business can use the Rapid Response Service, email rrs.enquiries@jobcentreplus.gsi.gov.uk, telling them:

- your contact details
- the town(s) your business is based in (including postcodes)
- the location(s) of the redundancies

For further information visit <https://www.gov.uk/staff-redundant/overview>

Help for employees (continued)

Redundancy in Scotland

In Scotland, Rapid Response Service support is delivered through Partnership Action for Continuing Employment (PACE) – there's more information on the Skills Development Scotland website. Alternatively, you can phone the Scottish national redundancy helpline on 0808 100 1855.

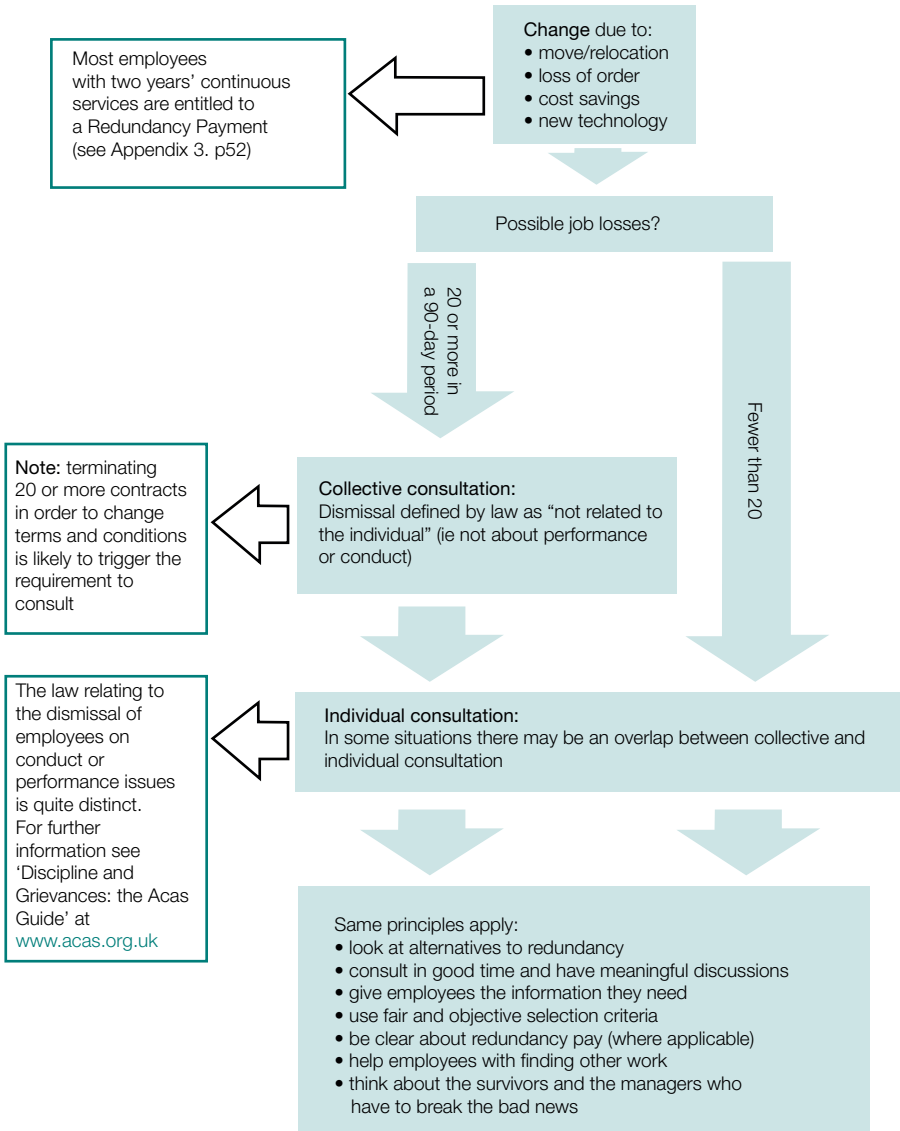
Redundancy in Wales

For employees who live in Wales the Welsh Government's ReAct Programme, which is part-funded by the European Social Fund, provides a package of support to help people gain new skills, overcome obstacles and improve their chances of returning to work in as short a time as possible after redundancy. ReAct can provide:

- a vocational training grant of up to £1,500.
- help with costs associated with training such as travel, accommodation and child care
- a wage subsidy of up to £3,000 to recruiting employers
- a training grant to recruiting employers.

For further information visit www.wales.gov.uk or contact the ReAct Helpline on 01792 765888.

Collective and individual consultation – the basic principles



Case study: Collective consultation exercise

Overview

A large UK retailer proposed to remove and reduce the 'working through-the-night' operation in 18 of its stores. This would result in 290 redundancies. Collective consultation was completed in eight weeks and, as a result, employees either accepted a day time redeployment opportunity or notice of redundancy was served. During the collective consultation exercise the company was faced with a number of questions:

When was there a proposal to consult on?

The in-house HR team worked with the business to identify at what point the business had a proposal to consult on. In this case they decided that this point had been reached:

- after some initial preparatory work had been completed and
- the senior leadership team had agreed **in principle** for the proposal to progress.

Did the proposal trigger collective consultation?

- Of the total of 290 proposed redundancies, six stores had more than 20 employees likely to be affected by the proposals. In order to maintain good employment relations and seek the views of all the affected employees, the company decided to collectively consult with employees in all 18 stores.

How did the company prepare for consultation?

The company worked quickly to:

- produce a consultation pack for affected employees and the organisation's consultative group
- make decisions about areas such as redeployment opportunities, selection processes and outplacement
- sign off a communication plan, slide pack and Q&A ready to open collective consultation
- train the manager leading collective consultation.

Case study: Collective consultation exercise

Overview (continued)

Who did the company consult with and how?

- The constitution with the company's consultation group allowed them to consult with their elected representatives, so they moved straight into opening collective consultation.
- The business proposal was presented to the employee representatives and initial Q&As answered. The following day the business announced the proposed changes to the affected stores and detailed minutes from the first consultation meeting were shared with all affected employees.
- Over the following eight weeks a series of meetings were held between the business and the consultative group. A Q&A process was also used where affected employees could ask the business questions directly through their consultative group.

When did collective consultation end?

- The company received counter proposals from the employee representatives. The company considered and responded to these and provided a thorough rationale as to why not all of the counter proposals had been accepted. The business agreed with the consultative group to formally close collective consultation.

What about individual consultation?

- Once collective consultation had been formally closed the business moved to individual consultation.
- Line managers were trained and then held the meetings. Affected employees could use the company's in-house telephone advice service for support.
- Redeployment options were taken up by many employees, but in some cases notice of redundancy was served.

Ten-point checklist for handling collective redundancies

Handling redundancies effectively involves making a series of decisions. These decisions can be made more quickly, and more effectively, if employers have established systems in place for consultation.

Many employers – such as the one described in the case study (see p11) – know how to handle redundancy situations. Others are not so sure about what to do.

The following ten-point checklist will help answer some of your questions and enable you to focus on the people rather than the process in a redundancy situation:

Collective redundancy checklist

1. When does consultation start?

Consultation must start “in good time” and must begin:

- at least 30 days before the first dismissal takes effect if 20 to 99 employees are to be made

redundant at one establishment over a period of 90 days or less

- at least 45 days before the first dismissal takes effect if 100 or more employees are to be made redundant at one establishment over a period of 90 days or less.

Employers must start the consultation process early enough for meaningful consultation to take place. Presenting a proposal as a done deal will not allow employee representatives the chance to play a constructive part in discussions on the possible way forward.

Some employers start to plan restructuring well in advance of proposed changes taking place. Carrying out consultation several months ahead of possible redundancies can allow more time for:

- employees to plan future career options

- the business to introduce changes in a more rational way.

However, pre-warnings of redundancies can harm morale and create prolonged uncertainty if decisions take a long time to make. As well as ensuring that consultation is meaningful, and focuses on the

right issues, employers may have to take additional steps to ensure that productivity and employee engagement are not adversely affected (see the Acas guide 'The people factor: engaging your employees for business success' at www.acas.org.uk).

Transitional arrangements

Changes to the law on collective redundancy consultation came in to place on 6 April 2013. Transitional arrangements mean that:

- if an employer proposes to dismiss 100 or more employees at one establishment over a period of 90 days or less **and the proposal is made before 6 April**, consultation must begin at least 90 days before the first dismissal takes effect.
- if an employer proposes to dismiss 100 or more employees at one establishment over a period of 90 days or less **and the proposal is made after 6 April**, consultation must begin at least 45 days before the first dismissal takes effect.

2. What is meant by an establishment?

In order for the legal requirement to consult to take effect, an employer must propose to make 20 or more employees redundant “at one establishment”. The European Court of Justice has said that ‘establishment’ means “depending on the circumstances, **the unit** to which the workers made redundant are assigned to carry out their duties.”

In order to establish whether a workplace can be classed as an establishment, it might be helpful to ask the following questions:

- Is it a distinct entity?
- Does it have a degree of permanence and stability?
- Does it have the ability to carry out the tasks it has been assigned?
- Does it have a workforce, technical means and organisational structure that allow it to carry out its function?

Depending on the answers to these questions, ‘establishment’ can mean more than one place or a place at which the employees do not habitually work.

For example, a logistics company has three distribution sites across a city. The warehouse staff are assigned to particular sites, which are run as distinct entities, and therefore for them the site would be the establishment. However the drivers, although based at a particular site, are expected to work flexibly across the three sites and are managed as a single entity. For the drivers, the establishment is likely to be the three sites. However, if the company was to restructure the transport function this might change.

The situation for employees who work at different geographical sites is not always clear cut. For example, in the building trade, employees might move between various building sites and it can be hard to determine who is allocated to which site and what degree of permanence the sites have. In these situations, it is worth:

- checking what individual contracts of employment say, in terms of any geographical location the employee is assigned to and any relevant management structure
- being clear about what actually happens in practice. Are there any patterns to where employees work and for what periods of time?

This is a complex area and, if in doubt, you may want to seek legal advice.

What is an establishment?

In working out what is an establishment, a 'distinct entity' does not have to:

- be **geographically** separate from other units and facilities of the undertaking
- be **independent** – in terms of any legal, economic, financial, administrative or technological autonomy
- have a **management** which can independently effect collective redundancies.

3. How many employees are involved?

In calculating how many people are involved in a potential redundancy situation, be aware that:

- **Voluntary redundancies are included in the total.** For example, if you propose to make redundant 22 employees but six of these employees volunteer for redundancy, you must consult.
- If a **collective consultation has already started** on a separate redundancy situation within the same organisation, the dismissals which are already subject to consultation do not have to be taken into account when considering a new proposal to make employees redundant. However, employers should not deliberately stagger redundancies to avoid consultation:
- **Redeployment will count towards the total number of proposed dismissals.** For example, if an employer proposes to make 17 employees redundant and redeploy a further five, the total number is over the 20 employee threshold, so they must consult (unless the employees are being redeployed under a contractual term).
- If an employee is on a **fixed-term contract which is coming to the end of its agreed duration**, the employee is not included in the calculation. For example, an employer proposes to dismiss as redundant 15 employees at one establishment over 40 days and

not renew the contracts of a further 15 employees whose contracts are about to end within these 40 days. In this situation there is no requirement to consult. However, if the employee proposes to dismiss the fixed-term employees earlier than the date

agreed within the 40 day period (and the reason is redundancy), the employer must include the fixed-term contracts in the count for collective redundancies and must consult on the proposed redundancies.

Collective redundancy and fixed-term contracts

When counting the number of redundancies proposed, the employer must include any fixed-term contracts if the employer:

- proposes to terminate the contract early, and
- proposes to do so on grounds of redundancy

Where an employer simply proposes to terminate a fixed-term contract on the date agreed in the contract, such a dismissal does not need to be included in the number of proposed redundancies.

This is the case even if the dismissal occurs within the same period of time as the proposed collective redundancies.

4. Who to consult?

Employers must consult with:

- representatives of any recognised independent trade union, or
- other elected employees, if no trade union is recognised.

Employee representatives may be elected solely for the purpose of consultation about specific redundancies or they could be part

of an existing consultative body.

Any existing body – for example, one formed as part of the Information and Consultation of Employees (ICE) Regulations – must have a broad enough remit to discuss redundancy issues (see Appendix 1). For further information on electing employee representatives and their rights and responsibilities see Appendix 4, p54.

Note:

Union and employee representatives of employees have particular rights and protections which enable them to carry out their functions properly. These include time off for duties in relation to redundancy information, consultation and access to accommodation and facilities (see Appendix 1 for more information).

Employers must consult with the ‘appropriate representatives’ of any of the employees who may be affected (directly or indirectly) by the proposed redundancy dismissals or by any measures taken in connection with those dismissals.

For example, if an employer decides to cut an administrative team, this may indirectly affect the sales team who may have to take on some of the administrative function.

5. What information should you provide?

Employers are often uncertain about what level of detail they should disclose about the reasons for the proposed redundancies. Information, or lack of it, can become the cause of mistrust and frustration.

Too much information can take time and, sometimes, specialist training to be able to analyse correctly. Too little information can make employees feel they are being kept in the dark and unable to take part fully in discussions.

There may be situations where employers feel unable to disclose information they consider to be commercially sensitive, for example, if an employer is proposing to reorganise the business and does not want to give competitors information on products or finances.

Good employment practice recommends that you should be as open as possible with unions and employee representatives. Withholding information may hinder the progress of effective consultation and may even render the consultation invalid. See the case study on p11 for how the process can work in practice.

Information you must disclose

Employers must disclose in writing to the appropriate representatives the following information concerning proposals for redundancies so that they can play a constructive part in the consultation process:

- the reasons for the proposals
- the numbers and descriptions of employees it is proposed to dismiss as redundant
- the total number of employees of any such description employed at the establishment in question
- the way in which employees will be selected for redundancy
- how the dismissals are to be carried out, taking account of any agreed procedure, including the period over which the dismissals are to take effect
- the method of calculating the amount of redundancy payments to be made to those who are dismissed
- agency workers: the number of agency workers, where they are working and the type of work they are doing.

6. How should consultation be conducted?

Consultation must include ways of:

- avoiding the dismissals
- reducing the number of employees to be dismissed, and
- mitigating the effects of dismissals.

Consultation should be genuine and must be undertaken by the employer “with a view to reaching agreement with appropriate representatives on these issues”. This means allowing enough time to discuss issues at a formative stage and giving real

consideration to counter proposals or suggestions. See the case study on p11 for how this consultation process might work in practice.

It is not always possible for consultation to find ways of avoiding dismissals. But genuine consultations about the business reasons behind the proposed redundancies are more likely to produce creative solutions. The recent economic downturn has highlighted examples of employers, employee representatives and unions working together to save jobs by agreeing to alternative measures, such as temporary lay-offs or reduced hours.

Changing contracts of employment

Any changes to a contract of employment should be agreed with the employee. Terminating the contracts of 20 or more employees in order to change terms and conditions, such as hours or pay, may trigger the legal obligation to consult – as these are not related to the individual – even if you intend to re-engage the staff on new contracts.

These terminations will be dismissals and may be challenged as unfair at an Employment Tribunal. An employer will rely on ‘some other substantial reason’ as a fair reason for dismissal and will need to show that a fair process was followed. For further information see the Acas guide ‘Varying a contract of employment’ at www.acas.org.uk.

7. How long should consultation last?

The law states when consultation must start. It does not say how long it must last. The length of consultation will vary depending on individual circumstances.

Some employers assume that consultation has to last at least 30 or 45 days, depending on the number of proposed redundancies, and start planning back from this date. However, consultation can be a speedier or lengthier process, depending on the number of people involved and the complexity of the situation.

There is no set period for consultation to end. It can go beyond the prescribed minimum periods between the start of consultation and the dismissals taking effect. The key point is not how long the consultation lasts, but that it is meaningful while it lasts.

It is also not necessary for the parties involved to reach agreement for the consultation to be complete. As long as there has been genuine consultation “with a view to reaching agreement”, an employer can end the consultation. This should be done only when they can demonstrate that they have listened and responded to the views and suggestions raised.

8. When do you carry out individual consultation?

Employers may need to be flexible about how they arrange individual consultation. Some organisations wait until collective consultation has ended, before consulting individual employees who may be at risk of redundancy. However, there may be situations when it is appropriate to run collective and individual consultation concurrently.

For example, an employer may have come to an agreement with employee representatives on the number of redundancies and how they will be selected, but discussion may still be ongoing to agree redundancy payments. In this situation it may be worth starting to consult with affected employees individually.

Or different groups of employees might be made redundant at different times. For example, a redundancy schedule for a sales team and an engineering team might be staggered. In this case, collective consultation might be taking place for one group at the same time as individual consultation is ongoing for the other group.

9. When does dismissal take effect?

Redundancy notices must not be issued until collective and individual consultation has been completed. This notice may be given before the end of the minimum period, if the consultation is genuinely complete.

The dismissal itself cannot take effect until the minimum period has expired and individual notice periods have been observed. The date the dismissals take effect may, therefore, also depend upon the period of notice which applies.

The employer must give at least the minimum statutory notice period. This is:

- one week's notice if the employee has been employed by the employer continuously for one month or more, but for less than two years; or

- one week's notice for each year employed if the employee has been employed by the employer continuously for two years or more, up to a maximum of 12 weeks. For example, if an employee has worked for five years then they are entitled to five weeks' notice.

This is the minimum period of notice. The employer and employee can agree a longer period of notice in the contract of employment.

The first dismissal must not 'take effect' until the minimum period has expired. The date on which a dismissal 'takes effect' is the date on which the notice expires, not the date on which it is given. Employment can be terminated before the end of notice period where an employee has agreed to take a payment in lieu of notice.

Examples of when dismissal might take effect

An employer is proposing to make 25 employees redundant at one establishment over a period of 90 days. The minimum period between when consultation must begin and when any dismissals take effect is therefore 30 days. Although both parties undertake meaningful consultation, it is not complete until day 40. At this point, the employer may issue employees with their notices of redundancy.

Examples of when dismissal might take effect (continued)

The actual period for the redundancies to take effect would vary according to the circumstances of individual employees, but consultation must be genuinely complete before statutory notice can begin. For example:

- Employee A has been with the business for just two months and his contract of employment does not refer to a notice period. However the statutory minimum notice period is one week, which means that once consultation is genuinely complete, the minimum time before the redundancy can take effect is 47 days (40 days consultation plus seven days notice).
- Employee B has been with the company for 13 years and his contract of employment contains a 28-day notice period. However, the minimum statutory notice period for an employee with at least 12 years' continuous employment is 12 weeks (84 days). This means that once consultation is genuinely complete, the minimum time before the redundancy can take effect is 124 days (40 days plus 84 days).

The consultation process can sometimes be completed sooner than the minimum period, but statutory notice cannot end until after the minimum period has elapsed. For example, in the scenario described above, consultation might be completed in 25 rather than 40 days. In this situation, the minimum time before the redundancy can take effect following the start of the consultation would be 32 days for Employee A and 109 days for Employee B.

When employees do leave, they might also be entitled to redundancy pay, which is worked out separately – see Appendix 3, p52.

10. What are the rights of redress?

Where an employer fails in any way to comply with the requirements to consult about proposed redundancies, a complaint may be made to an employment tribunal. A complaint may be made by either:

- an appropriate trade union, or, in cases where no trade union is recognised, an elected employee representative of affected employees, or
- where there is no appropriate trade union or other elected employee representative, by any employee who has been or may be dismissed.

The complaint must be lodged either before the last of the dismissals takes effect or within three months after the last of them. In exceptional circumstances the tribunal can allow a longer period for a complaint to be lodged.

An Acas conciliator may assist in reaching a solution whether or not an application has been made to an employment tribunal. If a settlement is not reached and the tribunal finds the complaint justified, a protective award may be made in favour of the employees concerned.

Individuals may also be able to make a complaint of unfair dismissal if they feel they have been unfairly selected for dismissal (see p32).

Protective awards

A **protective award** requires employers to pay employees their normal week's pay for a period of time called the 'protected period'.

The tribunal has the discretion in fixing the length of that period, depending upon what is just and equitable and taking account of the seriousness of the employer's default.

The maximum length of the protected period is 90 days in all cases where 20 or more are to be made redundant.

Dealing with special cases

Collective redundancies and TUPE

The Transfer of Undertakings (Protection of Employment) Regulations (TUPE) protects employees' terms and conditions of employment when a business is transferred from one owner to another. Employees of the previous owner when the business changes hands automatically become employees of the new employer on the same terms and conditions.

It's as if their employment contracts had originally been made with the new employer. Their continuity of service and any other rights are all preserved. Both old and new employers have duties to inform and (in some cases) to consult any employees affected directly or indirectly by the transfer. Unlike the collective redundancy regulations, there is no trigger for this right based upon the number of employees – it applies whether one or 500 employees are affected.

But what happens if either the old or new employer proposes to make redundancies during or after a transfer of undertaking?

This timing of two parallel consultation processes – one for collective redundancies and one for a

transfer of undertaking – can cause some confusion for employers. It can also be unclear to what extent the new or old employer should be involved in consultation and whether it can take place before the transfer.

Good practice suggests that the new and old employer should work together cooperatively to ensure effective consultation. In some instances, the new employer can start collective redundancy consultation with the transferring employees before the transfer is completed.

The government is proposing to simplify the TUPE regulations and provide more detailed guidance. For further information go to www.gov.uk/consultations.

Collective redundancies and insolvency

Many businesses find themselves faced with the prospect of collective redundancies as a result of severe financial difficulties. Insolvency is a relatively common occurrence and is not of itself a 'special circumstance', so employers are obliged to consult with their employees.

Most organisations have plenty of warning of severe financial difficulties and it is important that employers start planning for consultation as

soon as it is recognised that significant redundancies are likely to occur.

In an insolvency scenario the responsibility to start the consultation remains with the directors – at least until the point at which the business enters into a formal insolvency procedure (such as administration or liquidation). If the directors or managers fail to consult collectively before the organisation goes into administration, it is up to the insolvency practitioners to do so.

Useful sources of help

As well as the JobCentre Plus Rapid Response Service in England, PACE in Scotland and ReAct in Wales (see p8 for details), there are a number of other organisations who can provide help during a redundancy situation:

- The National Careers Service provides careers advice and information on a wide range of jobs, training course resources and funding. Further information is available from <https://nationalcareersservice.direct.gov.uk>

special circumstances

Employers can cite ‘special circumstances’ as a legal defence against their failure to comply with the requirement to inform and consult employees.

These ‘special circumstances’ are not legally defined but they must make it impracticable for them to carry out their duty. Case law suggests that they only apply in exceptional circumstances.

One situation that cannot count as a defence is when an employer claims that they couldn’t comply with their duty to consult because a controlling body (head office or parent company) had not supplied the necessary information.

- The National Apprenticeships Service offers information about apprenticeships, including how it might be possible to complete them with another employer. Further information is available from www.apprenticeships.org.uk
- The Talent Retention Solution (TRS) provides an industry-led and sector-focused programme through which to facilitate the deployment and retention of key advanced manufacturing and engineering skills across the UK. Further information is available from www.talentretention.biz/
- Local colleges and training providers can advise individuals whether they might be eligible for fully funded training which can help them retrain or upskill. <http://skillsfundingagency.bis.gov.uk/training/>
- If a firm is legally insolvent, employees may also be entitled to statutory redundancy payments and other related payments through the Redundancy Payments Service. Further information is available from www.gov.uk/your-rights-if-your-employer-is-insolvent/overview

Looking after your employees and your business

For organisations to manage collective redundancies well and help ensure their future success, they need:

- **good working relationships** with employees, unions and employee representatives
- **agreed procedures for handling redundancies.** This might include a checklist, covering some of the issues covered in this guide
- an organisational culture that recognises the **emotional as well as economic impact** of change
- a **plan for restructuring** and looking to the future.

Work closely with unions and employee representatives

Some employers view representation as a procedural mechanism that slows down decision making and dilutes management authority. But consultation is an extremely

important part of any change process and when faced with the prospect of collective redundancies it is better to have a system in place that is tried and tested and ready to use.

In recent years, many employers have become more committed to the use of direct methods of communication and involvement. Although regular meetings between managers and their staff are invaluable in sharing information and getting feedback, one-to-one engagement is not the same as formal consultation.

For details of the **rights employee representatives** have to time off and the use of facilities, see the Acas guides 'Union representation in the workplace' and 'Non-union representation in the workplace' at www.acas.org.uk

It is worth investing the time and energy into making relationships with employees, employee representatives and unions effective and productive so that genuine consultation can take place on an ongoing basis.

The system of consultation you develop should be based, wherever possible, on:

- the rule of **'no surprises'**. If you have an ongoing dialogue, where information is shared and future developments are signposted, there should be no big surprises. Of course, economic pressures can force businesses to make difficult decisions very quickly but there are usually warning signs. Employers can use a variety of means to ensure everyone is kept informed and involved, from informal soundings-out to detailed briefings and negotiation
- **promoting awareness** of how policies and procedures work. Employee representatives can make a more positive contribution to discussions if they know how consultative committees work. This can involve explaining fairly straightforward issues, such as how committees are formed, how and when opinions are expressed and how decisions are made and recorded. Or it can mean providing specialist training to help

understand complex financial, operational or legislative issues

- **trust and cooperation.** Employers and employee representatives should adopt a collaborative rather than an adversarial approach to consultation. The best place to start is by the open sharing of information. Protracted and unproductive meetings can badly hamper the organisation's economic prospects and lower staff morale
- **what works best for your organisation.** The kind of representative groups you form, how often they meet and how they are formed will partly reflect the individual characteristics of your business. For example, the length of consultation required may partly depend on the level of experience of employee representatives. Also, some organisations only consult on those issues required by law, while others are more pro-active and consult on a much wider range of issues.

Develop a collective redundancy procedure

Employers may find it helpful to agree a redundancy procedure with employee representatives and any recognised trade unions. As well as setting out consultation arrangements, a procedure might contain the following:

1. the measures for **avoiding, reducing or mitigating** compulsory redundancies
2. general guidance on the **selection criteria** to be used where redundancy is unavoidable
3. the policy of helping redundant employees obtain training or search for **alternative work**.

Avoid, reduce and mitigate

Some of the measures employers might consider to avoid redundancies, or minimise their impact, include:

- asking for volunteers – it is not uncommon to offer enhanced redundancy payments as an incentive to attract people to leave
- natural employee turnover
- restrictions on recruitment
- retraining and redeployment to other parts of the organisation
- reduction or ending of overtime

A redundancy procedure can be beneficial for both employers and employees:

For employers it:

- ✓ helps retain skilled jobs
- ✓ reduces misunderstanding
- ✓ helps with better forward planning
- ✓ makes change easier – for example, introducing new technology
- ✓ helps cement buy-in from unions and employees.

For employees and unions it:

- ✓ helps to save jobs
- ✓ ensures fair treatment
- ✓ demonstrates concern for the welfare of all staff
- ✓ reduces the fear of the unknown
- ✓ gives the opportunity to influence management policy.

- introduction of short-time working or temporary lay off (where this is provided for in the contract of employment or by an agreed variation of its terms)
- termination of the employment of temporary or contract staff
- applications for staff to work flexibly.

You may need the procedure to be as flexible as possible, so build in some room for manoeuvre. This will be particularly true in the choice of selection criteria. For example, it may be vital that the business maintains the right balance of skills and experience going forward.

Selection criteria

You need to identify the group of employees at risk of being made redundant. This is known as the 'pool of selection' and it is to these employees that you should apply the appropriate selection criteria.

Clearly defined and agreed selection criteria will help you to select people for redundancy fairly. They also help to ensure that you are seen to be fair. Examples of such criteria include:

- attendance record (you should ensure this is accurate and that

absence relating to disability or pregnancy are not included)

- disciplinary record
- skills or experience
- standard of work performance.

Many organisations use a mixture of selection criteria weighted as part of a selection matrix (see Appendix 2 for an example). This helps to avoid over-emphasis on one particular selection criteria and can reduce the risk of unfairly discriminating against employees.

You should also establish an appeals procedure, so that employees have the chance to raise any concerns they have about the way the selection criteria were applied. This may reduce the likelihood of complaints to employment tribunals.

Automatically unfair selection criteria

Some selection criteria are **automatically unfair**. You must not select an employee for redundancy based on any of the following reasons:

- pregnancy: including all reasons relating to maternity
- family: including parental leave, paternity leave (birth and adoption), adoption leave or time off for dependants
- acting as an employee representative
- acting as a trade union representative
- joining or not joining a trade union
- being a part-time or fixed-term employee (see 'Redundancy and the law', Appendix 1 for further clarification)
- their age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation
- pay and working hours: for example, refusing to give up rest breaks or asserting one's right to the National Minimum Wage or statutory holiday entitlement.

For further information visit www.gov.uk

Help finding other work

An employer must seek to find any suitable alternative employment for employees they are proposing to make redundant. This is not part of

the collective consultation process, but is an important part of looking after the wellbeing of staff. The job offer process should run as follows:

The employer's offer	<ul style="list-style-type: none">● In order to avoid the need to make a redundancy payment, the offer must be made before the employment under the previous contract ends.● The offer must be for the new job to start either immediately after the end of the old job or after an interval of not more than four weeks.
The employee's decision	<ul style="list-style-type: none">● Employees who unreasonably refuse an offer of suitable alternative employment may lose any entitlement to redundancy pay.● Unreasonable refusal may arise where the differences between the new and old jobs are negligible.● Refusal may be reasonable if the new job would cause domestic upheaval, for example if there was a considerable change in working hours or a need to move house.
The trial period	<ul style="list-style-type: none">● An employee who is under notice of redundancy has a statutory right to a trial period of four weeks (extendable by agreement where training is involved) in an alternative job where the provisions of the new contract differ from the original contract.● The trial period begins when the previous contract has ended and ends four weeks after the date on which the employee starts work under the new contract.

The trial period (continued)

- The effect of the trial period is to give both the employer and the employee a chance to decide whether the new job is suitable. The employee will not necessarily lose the right to a redundancy payment.
- If the employee works beyond the end of the four-week period any redundancy entitlement will be lost because the employee will be deemed to have accepted the new employment (unless agreed otherwise).

Time off to look for new work or for training

Employees who are:

- under notice of redundancy and
- have been continuously employed for at least two years

qualify for a statutory entitlement to a **reasonable amount of time off** to look for another job or to arrange training.

The employer does not have to pay more than 40% of a week's pay, regardless of the length of time off allowed. Where possible, employers should extend such assistance to all employees who are affected by redundancy.

Additional assistance

Employers should think carefully about any other help they can give employees faced with redundancies. Counselling, where resources allow, can help employees to come to terms with the emotional impact of being made redundant.

Information on the financial effects of redundancy can also be very helpful – for example, looking at redundancy pay, pensions and state benefits.

Jobcentre Plus have a 'Rapid Response Service' which helps individuals to move quickly into alternative employment without the need to claim welfare benefits. They can also help employees write CVs and find jobs.

To find out how your business can use the Rapid Response Service, email rrs.enquiries@jobcentreplus.gsi.gov.uk, telling them:

- your contact details
- the town(s) your business is based in (including postcodes)
- the location(s) of the redundancies.

For further information visit www.gov.uk/staff-redundant/overview

The Rapid Response Service can also signpost employers to information that can be given to employees facing redundancy.

Redundancy in Scotland

In Scotland, Rapid Response Service support is delivered through Partnership Action for Continuing Employment (PACE) – there's more information on the Skills Development Scotland website. Alternatively, you can phone the Scottish national redundancy helpline on 0808 100 1855.

Redundancy in Wales

For employees who live in Wales the Welsh Government's ReAct Programme, provides a package of support to help people gain new skills, overcome obstacles and improve their chances of returning to work in as short a time as possible after redundancy. For further information visit www.wales.gov.uk or contact the ReAct Helpline on 01792 765888.

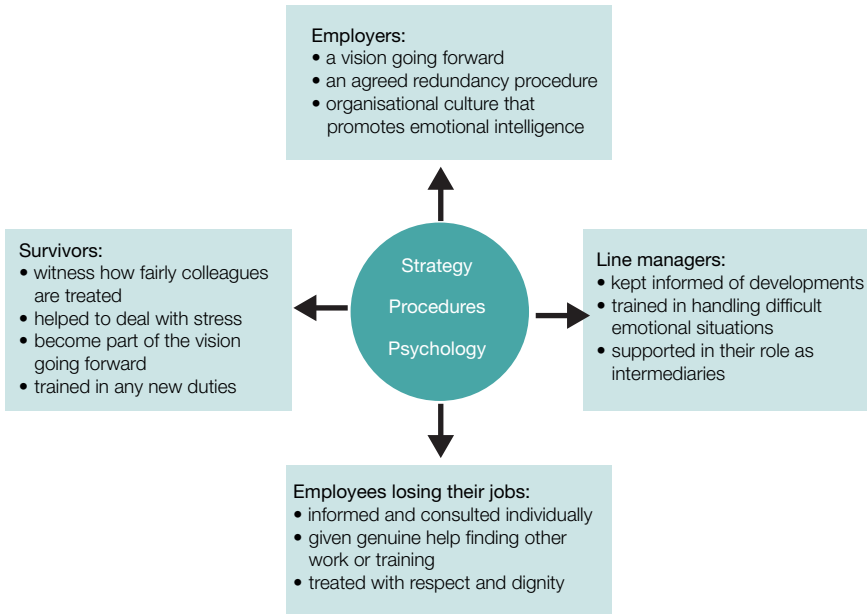
Recognise how people feel

Dealing with redundancies in the right way depends on three things:

1. **strategic vision** – this means being able to plan ahead as well as you can, and share those plans with your employee representatives
2. **redundancy procedure** – how redundancies will be avoided or minimised and what selection criteria will be used
3. **psychology** – understanding your employees will help you deal with the people part of redundancies as sensitively and fairly as possible.

These three factors are very much inter-connected. For example, your redundancy procedure should state how you will share your plans for the

Looking after employee wellbeing in redundancy situations



future. And discussions with employee representatives and employees should be based on an understanding of how the changes will affect individuals emotionally and psychologically. Employers may also need to stress that in order to look after their remaining employees, they have a responsibility to look after the interests of the organisation.

The person who has to break the bad news

Recent Acas research has shed light on the vital role the teller of bad news can have on:

- how well employees cope after being made redundant
- the morale and levels of motivation of the employees who stay
- the overall success of the business' reorganisation or downsizing.

An employer should ensure the person who breaks the bad news is:

- ✓ **Fully informed:** they should fully understand the organisation's business rationale for downsizing and be able to put this in context when communicating to affected employees.
- ✓ **Trained:** at the very least think about training in 'having challenging conversations'.
- ✓ **Not over-worked:** their role is likely to bring very long hours with emotional strain.
- ✓ **Not isolated:** they should have others to turn to for moral support.
- ✓ **Aware of the role of trade unions:** research has found that union representatives often proved to be a source of support and guidance for the managers having to break the bad news.

Acas research paper, *Downsizing envoys: a public/private sector comparison*, Dr Ian Ashman

The person who breaks the bad news to an individual about a redundancy is often their line manager – although they may also be a human resources specialist, or a consultant from outside the organisation.

They may be expected to:

- act as the link between the organisation's top-level decision makers and employees at risk
- meet and liaise with at risk employees over who may be leaving or moved to other jobs

- support employees emotionally and helping them find other work.

Many managers are quite unprepared for the range of emotions they will face. Employees are, understandably, often angry and shocked about what's happening to them.

As the diagram shows, if employers look after their line managers, the managers will take better care of those on the receiving end of bad news. And if those who lose their jobs are treated with dignity and respect, then those who remain are more likely to feel engaged with the organisation going forward.

Looking after those who are still employed

There is increasing awareness of the impact that redundancies have on the remaining employees. Additional help, especially in the form of one-to-one communication and counselling, can be particularly beneficial for those affected by 'survivor syndrome'. During consultation, employers should consider the impact of redundancies on the workload of these survivors.

Sufferers of survivor syndrome often experience feelings of guilt, low morale and a general sense of disengagement from their organisation after surviving job cuts. In common with the symptoms of many mental health problems, survivor syndrome undermines relationships at work. A recent survey from the IRS Employment Review finds that:

- 65% of employers surveyed reported that stress had increased among employees who have survived one or more redundancy programmes
- 63.8% agreed that "it is difficult to ensure employees continue to trust us following redundancy programmes".

How employees react to seeing their colleagues or friends made redundant will depend a great deal on their individual psychological make-up. Getting to know your staff can help you to make the reorganisation or downsizing a less stressful experience.

A better understanding of psychology and team dynamics will also help to inform your communications strategy – getting across your vision for the future and offering reassurance. For more information on managing mental health see the Acas guide 'Promoting positive mental health at work' at www.acas.org.uk.

Restructuring: a plan for the future

Managing collective redundancies effectively will help provide a good foundation for restructuring the business going forward. Open channels of communication and genuine consultation based on trust and collaboration will enable you to:

- get employee commitment for new working practices and organisational goals
- be more flexible in the way you respond to market forces
- develop clear messages about the future direction of the business.

There is bound to be a good deal of suspicion and anxiety about future work prospects after a round of collective redundancies. Employees may feel distracted and less able to be fully engaged in their work. Any hint of employee representatives and managers retreating into an 'us and them' position will only reinforce people's worst fears.

Here are some tips for maintaining levels of employee engagement during and after a restructuring process:

- don't abandon your **vision**
– employees need hope now more than ever. But be realistic – no false promises!
 - keep **talking** – giving employees a chance to have a say is critical for morale and motivation
 - don't abandon your **line managers** – keep them briefed on developments and, where resources allow, give them training in so-called 'soft management' skills such as active listening and handling difficult conversations
- work at your relationships with **unions and/or employee representatives**. If you have set up consultative or joint working groups, why not use them to consult on other workplace issues on an ongoing basis?
 - use your **performance management** system to re-enforce company values around emotional intelligence
 - try to pay attention to the **health and wellbeing** of staff – Acas has published useful guides to 'Health, work and wellbeing' and 'Promoting positive mental health at work' (available at www.acas.org.uk/publications)

Appendix 1: Redundancy and the law

Redundancy definition for:

Redundancy payments and unfair dismissal

Under the Employment Rights Act 1996, redundancy arises when employees are dismissed because:

- the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was so employed; or
- the employer has ceased, or intends to cease, to carry on the business in the place where the employee was so employed; or
- the requirements of the business for employees to carry out work of a particular kind has ceased or diminished or are expected to cease or diminish; or
- the requirements of the business for the employees to carry out work of a particular kind, in the place where they were so employed, has ceased or diminished or are expected to cease or diminish.

The right to be consulted

When an employer proposes to make 20 or more employees redundant in one establishment over 90 days or less, the law defines redundancy as:

“dismissal for a reason not related to the individual concerned or for a number of reasons all of which are not so related.”

Rights of employee representatives

The right to time off, training and facilities

Representatives of employees have particular rights and protections which enable them to carry out their functions properly. The rights of trade union members, including officials, are contained in separate legislative provisions, but are essentially the same as those of other elected representatives, and include time off for duties in relation to redundancy information and consultation.

Legislation concerning elected representatives provides that:

- employers must allow representatives access to affected employees and to provide them with **accommodation and facilities** if necessary
- representatives and candidates for election have a right to **reasonable time off with pay** to carry out their functions and for training in connection with those functions
- representatives and candidates for election have a right **not to be subjected to dismissal** or any detriment because of their status or activities. The dismissal of an elected representative or candidate for election will be automatically unfair if it is wholly or mainly related to the employee's status or activities as a representative
- any employee is **unfairly dismissed** if the main reason for the dismissal is that he or she took part in an election of employee representatives for collective redundancy purposes. An employer may not subject an employee to any detriment on the ground that he or she participated in an election of such a representative.

	<p>A complaint may be made to an employment tribunal by elected representatives or, where appropriate, candidates for election, concerning these rights. An Acas conciliator may assist in reaching a solution whether or not an application has been made to an employment tribunal.</p> <p>For further information see the Acas guides ‘Trade union representation in the workplace’ and ‘Non-union representation in the workplace’ at www.acas.org.uk/publications</p>
<p>The Information and Consultation of Employees Regulations</p>	<p>The Information and Consultation of Employees Regulations (often abbreviated to the ICE Regs) were introduced on 6 April 2005 and apply to businesses with 50 or more employees. The regulations give employees the right, subject to certain conditions, to request that their employer sets up or changes arrangements to inform and consult them about issues in the organisation.</p> <p>The requirement to inform and consult employees does not operate automatically. It can occur either by a formal request from employees for an agreement, or by employers choosing to start the process. If a company already has a pre-existing agreement in place to inform and consult it may not be necessary to make any changes. To be valid the pre-existing agreement must:</p> <ul style="list-style-type: none"> ● be in writing ● cover all the employees in the undertaking ● set out how the employer will inform and consult employees or representatives ● be approved by employees.

Discriminatory or unfair selection

A redundancy dismissal may be found to be discriminatory under employment equality legislation where selection was on grounds of sex, marital status, race, disability, sexual orientation, age, or religion or belief.

For example, selecting part-timers for redundancy may amount to indirect discrimination against women. In such circumstances employers must show that the selection is justifiable. For example, this may be possible if the employer can demonstrate that it is not practicable to fit part-timers who are predominantly female into revised shift patterns.

Employers need to be able to show that in selecting a particular employee they had compared him or her in relation to the agreed selection criteria with those others who might have been made redundant and that, as a result, it emerged that the employee was fairly selected. A claim for unfair selection may also arise where the employer has failed to undertake a reasonable search for alternative work throughout the organisation.

Notification of redundancies

It is a criminal offence not to notify the Secretary of State for Business, Innovation and Skills of proposed redundancies. This must be done:

- at least 30 days before the first dismissal takes effect where the employer proposes to dismiss 20-99 employees at one establishment within 90 days or less
- at least 45 days before the first dismissal takes effect where the employer proposes to dismiss 100 or more employees at one establishment within 90 days or less.

Swift notification will allow Jobcentre Plus' Rapid Response Service ('PACE' in Scotland and 'ReAct' in Wales – see p8) to help the employees involved to retrain or find alternative work.

A copy of the 'HR1 – Advance Notification of redundancies' form can be obtained from the Insolvency Service at www.insolvency.gov.uk/forms/forms.htm (tel: 0121 678 1936). A copy of this form must also be sent to all representatives who are to be consulted.

Fixed-term employees

The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) give fixed-term employees the right:

- not to be treated less favourably than a comparable permanent employee with regards to terms and conditions of employment
- to be informed of suitable permanent vacancies in the organisation
- to have their contracts automatically converted to indefinite ones after four years (the four years must start after 10 July 2002 and the employee must have been employed on successive contracts) unless the employer has a good reason not to do so
- the right not to be selected for redundancy or be unfairly dismissed if the principal reason for the selection was because they were a fixed-term employee
- to make a complaint to a tribunal seeking a written statement which sets out the reasons for the less favourable treatment complained of.

The right to no less favourable treatment applies where:

- the less favourable treatment is on the grounds that the employee is on a fixed-term contract and
- the difference in treatment cannot be justified on objective grounds.

Appendix 2: Sample forms: Selection Matrix/ Redundancy agreement

1. Selection Matrix

Below is an example of a selection matrix that could be used in a wide variety of workplace settings. Using a matrix is increasingly popular because they:

- contain agreed factors that can be applied to all individuals (although employers sometimes use a different matrix for different groups of employees – for example, the engineering team might have a different one from the sales team)
- can be easily explained to all staff in advance – it also helps if employee representatives have been consulted when drawing them up
- are ‘felt fair’ by all employees
- give a clear, structured and consistent system for managing selection issues
- can be used at tribunals to defend an employer’s decision.

It is worth emphasising that employers should have written evidence against each of the criteria listed below.

The following weightings are given for illustrative purposes only. It is up to an employer to decide upon the criteria and weightings that best apply to their business. This should be done in conjunction with their employee representatives.

Example of criteria levels: points allocated after weighting

Work Performance	Points
1. Outstanding – consistently exceeds company standard	15
2. Exceeds objectives of the role	12
3. Meets all objectives of the role	9
4. Meets some objectives of the role	6
5. Fails to meet objectives of the role	3
Skill/Competence	
1. Fully competent, multi-skilled, supports others on regular basis	15
2. Fully competent in current role	12
3. Competent in most aspects of current role, requires some supervision	9
4. Some competence in role, requires regular supervision and guidance	6
5. Cannot function without close support and/or supervision	3
Disciplinary record	
1. No record of disciplinary action	5
2. Record of informal disciplinary action	4
3. Verbal warning current	3
4. Written warning current	2
5. Final written warning current	1
Attendance record*	
1. No recorded absence	5
2. Some absence but below average for selection pool (or company)	4
3. Attendance in line with company (or selection pool) average	3
4. Absence level above average for selection pool (or company)	2
5. High/unacceptable level of absence	1

* Employers should ignore all absences related to disability or pregnancy.

2. Sample Redundancy Procedure

The following paragraphs are provided as a checklist for employers and employee representatives of the areas commonly covered in redundancy agreements. Each organisation is unique and every agreement should be tailored to meet the circumstances of the case. It is provided only to illustrate good practice but can be used as a basis for drawing up a redundancy agreement.

Preamble

Redundancy agreements normally begin with a statement of intent by both parties towards maintaining security of employment, wherever practicable.

For example:

It is the policy of Company X by careful forward planning to ensure as far as possible security of employment for its employees. However, it is recognised that there may be changes in competitive conditions, organisational requirements and technological developments which may affect staffing needs. It is the agreed aim of the Company and the Trade Union(s) to maintain and enhance the efficiency and profitability of the Company in order to safeguard the

current and future employment of the Company's employees. The Company, in consultation with the Trade Union(s), will seek to minimise the effect of redundancies through the provision of sufficient time and effort to finding alternative employment for surplus staff. Where compulsory redundancy is inevitable the Company will handle the redundancy in the most fair, consistent and sympathetic manner possible and minimise as far as possible any hardship that may be suffered by the employees concerned.

Consultation

The following areas are usually covered:

- a commitment to keep local trade union/employee representatives informed as fully as possible about staffing requirement and any need for redundancies
- the period(s) of consultation agreed (which may exceed the minimum required by law)
- information on which employee representative(s) will be consulted and a commitment to consider any alternative proposals with a view to reaching agreement on ways of avoiding dismissals, reducing the number of employees

to be dismissed and how to mitigate the effect of the dismissals

- disclosure of information required by law:
 - the reasons for the proposals
 - the numbers and descriptions of employees it is proposed to dismiss as redundant the total number of employees of any such description employed at the establishment in question
 - the way in which employees will be selected for redundancy
 - how the dismissals are to be carried out, including the period over which the dismissals are to take effect
 - the method of calculating the amount of redundancy payments to be made to those who are dismissed
 - agency workers: the number of agency workers, where they are working and the type of work they are doing
- additional areas on which to consult, for example:
 - the effect on earnings where transfer or down-grading is

accepted in preference to redundancy

- arrangements for travel, removal and related expenses where work is accepted on another site owned by the Company
- arrangements for reasonable time off with pay to seek alternative work to make arrangement for training
- assistance with job seeking
- arrangements for the transfer of apprenticeships.

Measures to avoid or to minimise redundancy

Included in this paragraph will be details outlining how every effort will be made to reduce the number of possible redundancies, for example by:

- natural wastage
- restricting the recruitment of permanent staff
- reducing the use of temporary staff
- filling vacancies from among existing employees

- reducing overtime by as much as production requirements will permit
- reducing the hours of work, for example, by the operation of short-time working
- training, re-training or redeploying employees for different work for which there is a requirement either at the same or at a different location.

Selection criteria

If, having taken any of the above steps, the number of employees still exceeds requirements, details should be given about how employees will be selected for redundancy, and by whom. For example, selection may be based on:

- the skills, experience and aptitude of the employee
- the standard of work performance
- the attendance or disciplinary record of the employee.

It is usual to include a statement giving a commitment to a fair, consistent, objective and non-discriminatory selection procedure.

Assistance with job seeking

An acknowledgement should be included recognising the statutory right of employees to time off to look for work or arrange for training for new employment. Any intention of the Company to provide further facilities should also be included.

Counselling

Larger companies may wish to provide facilities for a counselling service on site to give those employees who are to be made redundant the following:

- financial advice
- guidance on how to find another job
- advice on completion of application forms
- guidance on attending interviews.

Severance payments

Details should be provided about how any severance pay will be calculated and how commission, overtime payments, accrued holiday pay and time off in lieu not taken will be paid.

Appeals and hardship

The procedure for dealing with the right of appeal and cases of hardship should be explained.

Review and termination

Details should be given about regular review of the agreement and the procedure for terminating it.

Appendix 3: Statutory redundancy payments: an outline

Who qualifies for a redundancy payment?

A statutory payment is due only if the worker is an employee with at least two years' continuous service.

Who does not qualify for a redundancy payment?

The following groups of employees do not qualify:

- merchant seamen, former registered dock workers engaged in dock work (covered by other arrangements) or share fishermen
- crown servants, members of the armed forces or police services
- apprentices who are not employees at the end of their training
- a domestic servant who is a member of the employer's immediate family.

What are the payments?

For each complete year of service up to a maximum of 20, employees are entitled to:

- for each year of service under 22 – half a week's pay
- for each year of service at age 22 but under 41 – one week's pay
- for each year of service at age 41 or over – one and a half weeks' pay.

An employer should give an employee a written statement of how the redundancy payment is calculated. For a ready reckoner to help you with your calculations visit www.gov.uk

What is a week's pay?

A week's pay is that which the employee is entitled to under his or her terms of the contract at the 'calculation date'. The 'calculation date' is the date on which the

employer gives the employee the minimum notice to which he or she is legally entitled. If the pay varies (eg: through piece-work), the amount of the week's pay is averaged over the 12 weeks prior to the 'calculation date'. There is a maximum statutory limit (£450 from 1 February 2013) on the amount of a week's pay that may be reckoned. This figure is reviewed annually. Employers may, pay in excess of the statutory minimum.

How does an employee claim a payment?

There is no need for the employee to make a claim unless the employer fails to pay or disputes the employee's entitlement. Should there be a failure to pay, the employee must make a written request to the employer or to an employment tribunal within six months of the date the job ended.

What if an employer cannot pay?

If the employer has cash-flow problems so serious that making the redundancy payment would damage the business, arrangements can be made by the Department for Business, Innovation and Skills (BIS) to pay the employee direct from the National Insurance Fund. The employer is expected to pay back the payment as soon as possible,

if necessary in instalments. If the employer is insolvent, the payment is again made by BIS and the employer's share recovered from the assets of the business.

Is statutory redundancy pay taxable?

A statutory redundancy payment is not taxable, up to £30,000, but the employer may set it against tax as a business expense.

Appendix 4: Employee representatives – election and roles and responsibilities

Election of employee representatives

The rules are:

- 1) The employer shall make such arrangements as are reasonably practical to ensure that the election is fair.
- 2) The employer shall determine the number of representatives to be elected so that there are sufficient representatives to represent the interests of all the affected employees, having regard to the number and classes of those employees.
- 3) The employer shall determine whether the affected employees should be represented either by representatives of all the affected employees or by representatives of particular classes of those employees.
- 4) Before the election the employer shall determine the term of office as employee representatives so that it is of sufficient length to enable relevant information to be given and consultations to be completed.
- 5) The candidates for election as employee representatives are affected employees on the date of the election.
- 6) No affected employee is unreasonably excluded from standing for election.
- 7) All affected employees on the date of the election are entitled to vote for employee representatives.

8) The employees entitled to vote may vote for as many candidates as there are representatives to be elected to represent them; or, if there are to be representatives for particular classes of employees, for as many candidates as there are representatives to be elected to represent their particular class of employee.

9) The election is conducted so as to secure that:

- a. so far as is reasonably practicable, those voting do so in secret, and
- b. the votes given at the election are accurately counted.

Where an employee representative is elected in accordance with these rules but subsequently ceases to act as such and, in consequence, certain employees are no longer represented, another election should be held satisfying the rules set out at (1), (5), (6) and (9) above.

Role of the employee representative in redundancy consultations

The primary role is to take an active part in the collective consultation meetings with the organisation by:

- exploring ways in which redundancies can be avoided or reduced
- discussing the proposed method of selecting the employees who may be dismissed
- discussing what support and assistance is provided to affected employees and what the elements of the redundancy package should be.

To undertake this role, employee representatives will need to:

- understand management's proposals
- understand the main legal requirements (not expected to be an expert)
- report back to employees on the proposals and share information *
- seek employees questions, views and suggestions.

- discuss with other representatives the collective staff response
- meet with management and report back the staff response
- engage in an open dialogue aimed at problem-solving and reaching agreement
- report back to employees on the outcomes of consultations.

Helpful behaviours and attitudes

- be known to your constituents and encourage their involvement
- be clear how you will communicate and engage with constituents (meetings, email, intranet, surgeries)
- agree time off and use of facilities (rooms, email, intranet, noticeboards)
- prepare for, attend and participate in the consultation meetings
- listen to, question and clarify management proposals
- convey questions and concerns and make suggestions and proposals
- report majority views but also reflect minority opinions

- respect opinions of others even if you disagree with them
- seek to agree acceptable solutions to problems facing employees and the organisation.

Rights of employee representatives

- reasonable time off with pay to perform their duties and receive training
- reasonable access to constituent employees and use of organisation facilities
- not to be subjected to dismissal or detriment because of their status.

* (Note: it is management's primary role to ensure good communications on the consultation process.)

Information in this booklet has been revised up to the date of the last reprint – see date below. For more up-to-date information, please check the Acas website www.acas.org.uk.

Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be made by reference to the particular circumstances which apply. It may, therefore, be wise to seek legal advice.

Acas aims to improve organisations and working life through better employment relations. We provide up-to-date information, independent advice, high quality training and we work with employers and employees to solve problems and improve performance.

We are an independent, publicly-funded organisation and many of our services are free.

April 2013

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